

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #10	CCRB Case #: 202003650	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/21/2019 6:30 AM	Location of Incident: § 87(2)(b) [REDACTED] § 87(2)(b)	Precinct: 32	18 Mo. SOL 4/21/2021	EO SOL 12/6/2021	
Date/Time CV Reported Fri, 05/29/2020 12:09 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 05/29/2020 12:09 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Divers	5609	957551	WARRSEC
2. POM Sean Leone	08289	957765	WARRSEC
3. POM Francis Smillie	1952	958080	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Tamara Williams	6789	939697	032 DET
2. DT3 Carlos Matos	3232	933973	032 DET

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Divers	Abuse: Police Officer Robert Divers entered § 87(2)(b) [REDACTED] § 87(2)(b) in Manhattan.	[REDACTED]
B.POM Francis Smillie	Abuse: Police Officer Francis Smillie entered § 87(2)(b) [REDACTED] § 87(2)(b) in Manhattan.	[REDACTED]
C.POM Sean Leone	Abuse: Police Officer Sean Leone entered § 87(2)(b) [REDACTED] § 87(2)(b) in Manhattan.	[REDACTED]
D.POM Robert Divers	Abuse: Police Officer Robert Divers searched § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
E.POM Francis Smillie	Abuse: Police Officer Francis Smillie searched § 87(2)(b) [REDACTED] § 87(2)(b) in Manhattan.	[REDACTED]
F.POM Sean Leone	Abuse: Police Officer Sean Leone searched § 87(2)(b) [REDACTED] § 87(2)(b) in Manhattan.	[REDACTED]

### Case Summary

On May 29, 2020, § 87(2)(b) filed this complaint with the CCRB using the call processing system.

On October 21, 2019, at approximately 6:30 a.m., PO Robert Divers, PO Francis Smillie, and PO Sean Leone, of the Warrant Section, arrived at § 87(2)(b)'s home located at § 87(2)(b) in Manhattan. (PO Divers and PO Smillie have since been promoted to detective, and PO Leone has since been transferred to the Detectives Bureau Queens North). PO Divers, PO Smillie, and PO Leone allegedly opened § 87(2)(b)'s unlocked door and entered his apartment (**Allegations A, B, and C: Abuse of Authority – Entry of premises,** § 87(2)(g) PO Divers, PO Smillie, and PO Leone went into the living room, told § 87(2)(b) that they needed to bring him in for questioning, and allegedly told § 87(2)(b) that they needed to search the apartment (**Allegation D: Abuse of Authority – Search of premises,** § 87(2)(g) and **Allegation E and F: Abuse of Authority – Search of premises,** § 87(2)(g) § 87(2)(b) went into the bathroom to change and was then transported to the 32<sup>nd</sup> Precinct stationhouse where he was interviewed by Detective Tamara Williams and Detective Carlos Matos of the 32<sup>nd</sup> Precinct Detective Squad.

§ 87(2)(b) was arrested (**BR 03**) for an assault with intent to cause physical injury (§ 87(2)(b)).

There was no known video capturing this incident.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Robert Divers entered** § 87(2)(b) **in Manhattan.**

**Allegation (B) Abuse of Authority: Police Officer Francis Smillie entered** § 87(2)(b) **in Manhattan.**

**Allegation (C) Abuse of Authority: Police Officer Sean Leone entered** § 87(2)(b) **in Manhattan.**

**Allegation (D) Abuse of Authority: Police Officer Robert Divers searched** § 87(2)(b) **in Manhattan.**

**Allegation (E) Abuse of Authority: Police Officer Francis Smillie searched** § 87(2)(b) **in Manhattan.**

**Allegation (F) Abuse of Authority: Police Officer Sean Leone searched** § 87(2)(b) **in Manhattan.**

It was undisputed that PO Divers, PO Smillie, and PO Leone entered § 87(2)(b)'s apartment. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) consistently stated (**BR 01** and **BR 02**) that he woke up to the sound of PO Divers, PO Smillie, and PO Leone entering his apartment. § 87(2)(b) heard his door open, which was unlocked at the time. § 87(2)(b) explained that there was an artificial intelligence doorman to his building and he never buzzed the officers in. Two of the three officers were already inside the apartment when § 87(2)(b) got up out of bed. Officers knocked on the door as they were opening it and walking inside.

The door to the apartment entered into the living room. § 87(2)(b) came out of his bedroom and PO Divers, PO Smillie, and PO Leone asked him to confirm his identity, informed him that they needed him to come to the stationhouse for questioning, and told him that they needed to search the apartment. One officer looked inside the spare bedroom, and another looked inside the bathroom and § 87(2)(b)'s bedroom. There was only one closet in the bedroom that was open, but § 87(2)(b) did not recall whether the officer opened it. § 87(2)(b) went into the bathroom to get changed. § 87(2)(b) did not know whether the officers looked inside of any compartments or searched anywhere else while he was in the bathroom.

§ 87(2)(b) was handcuffed and brought to the 32<sup>nd</sup> Precinct stationhouse where he was interviewed. § 87(2)(b) was given a DAT and was released. The case ended up being dismissed.

§ 87(2)(b) was arrested (**BR 03**) for an assault with intent to cause physical injury  
§ 87(2)(b)

PO Divers stated (**BR 04**) that he went to § 87(2)(b) § 87(2)(b) in Manhattan for a case assigned to him that morning at the 32<sup>nd</sup> Precinct for a probable cause I-card. PO Divers knocked on the door and he did not recall checking the door to see if it was already open. § 87(2)(b) answered the door and provided his name. PO Divers informed § 87(2)(b) that there was an ongoing investigation at the 32<sup>nd</sup> Precinct and there was a probable cause I-card out for his arrest, and detectives needed to speak with him.

§ 87(2)(b) invited the officers inside on his own initiative. PO Divers did not ask to go inside of the apartment. PO Divers did not document § 87(2)(b)'s consent to enter the apartment and he did not recall providing § 87(2)(b) with a business card. PO Divers never told § 87(2)(b) that he did not have to let them inside. § 87(2)(b) went into the bathroom to get ready and brush his teeth. None of the officers told § 87(2)(b) that they had to search his apartment. The officers stayed in the kitchen at the entrance of the apartment. None of the officers went to any other areas of the apartment or looked in any rooms. None of the officers searched the apartment in any way or looked inside any drawers or cabinets. None of the other officers spoke to § 87(2)(b)

There was no record of a consent to search form (**BR 11** and **BR 13**).

According to the DD5 for complaint #2019-032-005907 (**BR 05**), PO Divers was assigned to a companion case #2019-3587, and he apprehended § 87(2)(b) inside of his apartment during this incident.

PO Smillie stated (**BR 06**) that he did not recall this incident because the case was assigned to PO Divers. PO Smillie stated that PO Divers likely did all the talking during the incident because it was his case. According to PO Smillie, the DD5 did not document § 87(2)(b)'s consent to enter.

PO Leone could not be interviewed because he was on extended military leave, however, PO Leone's statement would not have changed the recommended dispositions.

Patrol Guide procedure 212-11 (**BR 07**) states that for all consent searches, a common law right of inquiry – consent search report must be prepared before the end of tour. The form must document the time, location, and date of such request, consent refusal and search if performed, the apparent race, ethnicity, gender and age of the person who was the subject of such request and the MOS's name, command, tax or shield number.

New York City Administrative Code § 14-173 (**BR 12**) states that for a search based solely on consent, officers must articulate in plain and simple language in a non-threatening manner that the search is voluntary, and that the person may refuse the search. Officers must document the time, location, and date of such search, and the apparent race/ethnicity, gender, and age of the person who was the subject of the search.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 08**).
- PO Divers has been a member of service for six years and named a subject in three additional CCRB complaints and eight allegations, none of which were substantiated.
  - § 87(2)(g)

- PO Smillie has been a member of service for six years and named a subject in one additional CCRB complaint and three allegations, none of which were substantiated.  
○ § 87(2)(g) [REDACTED].
- PO Leone had been a member of service for six years and this is the first CCRB complaint to which he has been named a subject.

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- On May 24, 2021, a Notice of Claim FOIL request was submitted to the Comptroller's Office, the results of which will be added to the case file upon receipt (**BR 09**).
- § 87(2)(b) [REDACTED]  
[REDACTED]

Squad: 10

Investigator:	<u>Kelly Lyon</u> Signature	<u>Inv. Kelly Lyon</u> Print Title & Name	<u>07/19/2021</u> Date
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Squad Leader:	<u>Eric Rigie</u> Signature	<u>IM Eric Rigie</u> Print Title & Name	<u>7/19/2021</u> Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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